

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Earl L. Hazen &
Kamie J. Hazen,

Debtors.

Chapter 7

Case No.: 99-17110

APPEARANCES:

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Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is a motion by Earl and Kamie Hazen (“Debtors”) seeking to avoid a portion of Telmark LLC’s (“Telmark”) lien because it impairs their homestead exemption.

Jurisdiction

This is a core proceeding encompassed in the court’s jurisdiction pursuant to 28 U.S.C. §§ 157(a)(2)(A) and (K) and 1334(b).

Facts

The undisputed facts follow:

1. The Debtors jointly own and occupy property located at 3827 SH 11 B, North Lawrence, New York.
2. A recent appraisal indicates that the fair market value of the property is \$68,000.¹
3. The property is subject to a Key Bank mortgage for \$25,139.00 and the Debtors have “stacked” their homestead exemption.²
4. Telmark’s lien, entered December 15, 1999, totals \$370,476.22.

Arguments

The Debtors invoke 11 U.S.C. § 522(f) arguing that \$347,615.22 of Telmark’s \$370,476.22 lien should be avoided as impairing their homestead exemption. This would leave \$22,861 of the lien intact.

Telmark concedes that its lien is partially avoidable but argues that it should only be reduced by \$20,000, the amount of the Debtors’ homestead exemption.

Discussion

11 U.S.C. § 522(f)(1) states:

Notwithstanding any waiver of exemptions ... the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section ...

Here it is undisputed that Telmark’s lien is impairing the homestead exemption. The home is valued at \$68,000 and there is a Key Bank mortgage with a balance of \$25,139. The

¹Telmark has not provided any formal opposition to this valuation.

²Telmark does not argue that the property is not subject to the homestead exemption.

Debtors' exemption totals \$20,000 leaving \$22,861 in equity; Telmark's lien totals \$370,476.22.

As noted, Telmark argues that its lien should be reduced by \$20,000, the actual amount of the homestead exemption. However, nothing in 11 U.S.C. § 522 indicates that is the proper result. Additionally, the case law supplied by Telmark predates the 1994 amendment to this subdivision and, more importantly, does not address 11 U.S.C. § 522(f)(2)(A).³ Thus, the court finds the authority supplied by Telmark inapplicable and its legal argument unpersuasive.

The central question to be addressed is to what extent should the lien be avoided.

11 U.S.C. § 522(f)(2)(A) provides a formula for this determination, stating:

(2)(A) For the purpose of this subsection, a lien shall be considered to impair an exemption to the extent the sum of –
(i) the lien,
(ii) all other liens on the property; and
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
exceeds the value of the debtor's interest in the property would have in the absence of any liens.

Applying this formula⁴ to the facts of the present case results in granting the Debtors' request that \$347,615.22 of the lien be avoided, leaving \$22,861. See also, *In re Finn*, 211 B.R. 780 (1st Cir. B.A.P. 1997). (A partially undersecured judicial lien should be avoided only to the extent that it exceeds a debtor's equity in the property.)⁵

³11 U.S.C. § 522(f)(2)(A) articulates the formula for determining when and to what extent a lien impairs an exemption.

⁴The § 522(f)(2)(A) formula as applied: \$370,476.22 (the lien) + \$25,139.00 (all other liens on the property) + \$20,000 (exemption) = \$415,615.22 (the sum) – \$68,000 (the value of prop) = \$347,615.22 the impairment; the lien is avoided to the extent of the impairment.

⁵While adopting the ultimate conclusion of the *Finn* court, this court does not necessarily share that court's entire rationale.

Conclusion

For the above reasons the Debtors' request to have the judicial lien of Telmark partially avoided is granted and \$347,615.22 of the lien is avoided pursuant to 11 U.S.C.

§522(f). The portion of the lien that has been avoided shall not survive this bankruptcy proceeding and the County Clerk's office may so indicate on its records.

It is so ORDERED.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge